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UNCLAS SECTION 01 OF 03 ANKARA 004548

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E.O. 12958: N/A
TAGS: EINV KTDB EFIN TU
SUBJECT: 2003 INVESTMENT CLIMATE STATEMENT FOR TURKEY - PART II

Ref: STATE 128494

The following is the second of four cables transmitting the 2003 Investment Climate Statement for Turkey:

¶5. PERFORMANCE REQUIREMENTS/INCENTIVES

Turkey is a party to the WTO Agreement on Trade Related Investment Measures (TRIMS).

Turkey provides investment incentives to both domestic and foreign investors, though these were scaled back in 2003. These include a corporate tax exemption of 40 percent of specified investment expenses deductible from future taxable profits for investments greater than 5 billion TL (approximately USD 3,600). Certain other incentives may require an incentive certificate from the Turkish Treasury Undersecretariat. Investment incentives are defined in a May 2003 Finance Ministry decree. For more information on the Turkish incentive system, please visit: www.investinturkey.gov.tr/incentives.htm).

There are no performance requirements imposed as a condition for establishing, maintaining, or expanding an investment. There are no requirements that investors purchase from local sources or export a certain percentage of output. However, domestic or foreign investors who commit to realizing USD 10,000 of exports upon completion of the investment may be exempt from certain fees and taxes, such as those related to land registration or company establishment. Investors' access to foreign exchange has no relation to exports.

There are no requirements that nationals own shares in foreign investments, that the shares of foreign equity be reduced over time, or that the investor transfer technology on certain terms. There are no government imposed conditions on permission to invest, including location in specific geographical areas, specific percentage of local content - for goods or services - or local equity, import substitution, export requirements or targets, employment of host country nationals, technology transfer, or local financing.

The GOT does not request that investors disclose proprietary information, other than publicly available information, as part of the regulatory approval process. Enterprises with foreign capital must send their activity report, submitted to the general assembly of shareholders, auditor's report, and balance sheets to the Treasury's Foreign Investment Directorate every year by May.

With the exceptions noted under Section 1 "Openness to Foreign Investment" and Section 8 "Transparency of the Regulatory System", Turkey grants all rights, incentives, exemptions and privileges available to national capital and business to foreign capital and business, on a MFN basis. American and other foreign firms can participate in government-financed and/or subsidized research and development programs on a national treatment basis.

Visa, residence, or work permit requirements have not generally inhibited foreign investors. Expatriates may be assigned as managers or technical staff. We are aware of one case in the tourism sector in which denial of a residence permit has hindered operations for a foreign investor. A 2003 law (no. 4817) on work authorizations for foreign nationals should give the Ministry of Labor and Social Security more authority over work permits.

Implementing regulations are to be issued later this year.

Outside of the agricultural sector, Turkey generally has a liberal foreign trade regime. There are no discriminatory or preferential export or import policies directly affecting foreign investors. Turkey harmonized its export incentive regime with the European Union in 1995, prior to the start of the Customs Union. Turkey currently offers a number of export incentives, including credits through the Turkish Eximbank, energy incentives, and research and development incentives. Cash incentives for exporters have been eliminated. Foreign investors can participate in these export incentive programs on a national treatment basis. More information on Turkey's trade regime can be found at www.foreigntrade.gov.tr.
Military procurement generally requires an offset provision in tender specifications when the estimated value of the imported goods and/or services exceeds five million dollars. Turkish procedures provide little incentive for U.S. companies to satisfy offset requirements (the obligation to invest or buy Turkish exports as a condition of winning defense contracts) by investing in non-defense industries.
¶6. RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

Foreign and domestic private entities have the right to freely establish and own business enterprises and engage in all forms of remunerative activity. As noted above, restrictions exist in the establishment of firms in certain sectors where the share of foreign ownership is limited to 20 percent in broadcasting and up to 49 percent in aviation, maritime transportation, and value-added telecommunication services. Certain activities are reserved for GOT owned enterprises. For example, by law, Turk Telekom has a monopoly until December 31, 2003 on providing basic telephone services. Beyond these areas, private entities may freely establish, acquire, and dispose of interests in business enterprises, and foreign participation is permitted up to 100 percent.

Competitive equality is the standard applied to private enterprises in competition with public enterprises with respect to access to markets, credit, and other business operations. Turkey is adopting the EU's competition policy; a Competition Board was established in 1997 to implement the 1994 competition (anti-monopoly) law.

¶7. PROTECTION OF PROPERTY RIGHTS

Secured interests in property, both chattel and real are recognized and enforced. There is a recognized and reliable system of recording such security interests. For example, there is a land registry office where real estate is registered. Turkey's legal system protects and facilitates acquisition and disposal of property rights, including land, buildings, and mortgages, although some parties have complained that the courts are slow in rendering decisions and that they are susceptible to external influence (see "Dispute Settlement").

Turkey's intellectual property rights regime has improved, but still presents problems. In 1995, the Turkish Parliament approved new patent, trademark and copyright laws in connection with preparations for Turkey's customs union with the EU. In 2001, the Parliament enacted amendments to the copyright law, which provide retroactive protection, expand the list of protected items and include deterrent penalties against piracy. These amendments brought Turkey into compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in most areas. In recognition of Turkey's progress in the IPR area, USTR removed Turkey from its Special 301 Priority Watch List and placed the country on its Watch List in 2002, where it remains in 2003.

Intellectual property holders have praised Turkey's 2001 legislation as a significant improvement in the legal regime. In the software area, piracy rates have come down in recent years following an anti-piracy campaign and a directive to legalize software used in government bodies. However, piracy rates for recorded music remain persistently high. Trademark holders contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey.

Turkey's 1995 patent law replaced a law originally passed in
¶1879. New trademark, industrial design, and geographic indicator laws were passed at the same time, completely revamping Turkey's foundation for industrial property

protection. Turkey also acceded to a number of international conventions in 1995, including the Stockholm Act of the Paris Convention, the Patent Cooperation Treaty, and the Strasbourg Agreement. The Turkish Patent Institute (TPI) was established in 1994 as an independent legal entity (Law No. 4004, June 16, 1994) under the Ministry of Industry and Trade. TPI's mission is to support technological development in Turkey, establish and protect intellectual property rights and provide public information on intellectual property rights. Currently, TPI is understaffed to affect countrywide protection.

In accordance with the 1995 patent law and Turkey's agreement with the EU, patent protection for pharmaceuticals began on January 1, 1999. Turkey has been accepting patent applications since 1996 in compliance with the TRIPS agreement "mailbox" provisions. The patent law does not, however, contain interim protection for pharmaceuticals in the R&D "pipeline."

The key IPR concern for research-based pharmaceutical companies is Turkey's lack of data exclusivity protection, which is required by the TRIPS agreement. The lack of data exclusivity, combined with the lack of interim patent protection, poses substantial problems for research-based pharmaceutical companies.

¶8. TRANSPARENCY OF THE REGULATORY SYSTEM

The GOT has adopted policies and laws, which in principle should foster competition and transparency. However, foreign companies in several sectors claim that regulations are sometimes applied in a nontransparent manner. In 2002, the GOT published a report on transparency and good governance in Turkey's public sector and established an interagency steering committee to implement it. The plan calls for: greater public access to information from the government and public sector entities; financial disclosure by elected public officials; and decentralization of most public services.

The government in principle follows competitive bidding procedures. In 2003, Law 4734 on Public Procurement entered into force. The law established a board to oversee public tenders, and lowered the minimum bidding threshold at which foreign companies can participate in state tenders. However, the law restricts preferences for domestic bidders to Turkish citizens and legal entities established by them. Domestic bidders who form joint ventures with foreign bidders are not eligible for the preference. The public procurement law may be further amended in the future.

In general, labor, health and safety laws and policies do not distort or impede investment, although legal restrictions on discharging employees may provide a disincentive to labor-intensive activity in the formal economy. Certain tax policies distort investment decisions. High taxation of cola drinks discourage investment in this sector. Generous tax preferences for free zones provide a stimulus to investment in these zones, perhaps at the expense of investment elsewhere in Turkey. These preferences may be trimmed under legislation currently under consideration.

Particularly beyond the establishment phase, bureaucratic "red tape" has been a significant barrier to companies, both foreign and domestic. Parliament passed Law 4884 in June 2003 which should simplify company establishment procedures. The law repeals the permit requirement from the Industry and Commerce Ministry for certain firms, institutes a single company registration form and enables individuals to register their companies through local commercial registry offices of the Turkish Union of Chambers and Commodity Exchanges. The goal is to enable registration to be completed in as little as one day and to encourage electronic sharing of documents. Turkish government agencies are expected to issue implementing regulations needed to bring the law into force. The government is also considering other measures to streamline procedures for establishing and operating a business in Turkey, based on recommendations made in a World Bank-funded study on administrative barriers to investment.
Pearson